

**BUSINESS REPORT**

**MONTANA SENATE  
63rd LEGISLATURE - REGULAR SESSION**

**SENATE JUDICIARY COMMITTEE**

**Date:** Friday, January 25, 2013  
**Place:** Capitol

**Time:** 9:00 AM  
**Room:** 303

**BILLS and RESOLUTIONS HEARD:**

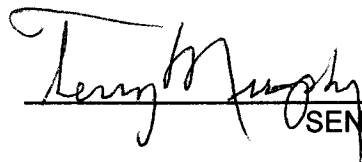
HB 42 - Revise laws related to destruction of property by minors - Keith Regier  
HB 132 - Revise Montana highway patrol use of uniform, title - Steve Lavin  
HB 139 - Update laws governing law enforcement communications system - Steve Lavin

**EXECUTIVE ACTION TAKEN:**

HB 42- Be Concurred In  
HB 132-Be Concurred In  
HB 139-Be Concurred In

SB 113-Do Pass As Amended  
SB 133-Do Pass As Amended  
SB 107-Do Pass

**Comments:**

  
SEN. Terry Murphy, Chair

# MONTANA STATE SENATE

## 2013 JUDICIARY COMMITTEE

# ROLL CALL

DATE: 1/25/13

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
CHAIRMAN, SENATOR TERRY MURPHY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
VICE CHAIRMAN, SENATOR SCOTT SALES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR SHANNON AUGARE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR ANDERS BLEWETT	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR SCOTT BOULANGER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR JOHN BRENDEN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SENATOR ROBYN DRISCOLL	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR JENNIFER FIELDER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR LARRY JENT	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR CLIFF LARSEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR CHAS VINCENT	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR ART WITTICH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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	<input type="checkbox"/>	<input type="checkbox"/>



## SENATE STANDING COMMITTEE REPORT

January 25, 2013

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 139** (third reading copy -- blue) **be concurred in.**

Signed: \_\_\_\_\_

*Terry Murphy*  
Senator Terry Murphy, Chair

To be carried by Senator Terry Murphy

- END -

**Committee Vote:**

**Yes 12, No 0**

Fiscal Note Required ☐

HB0139001SC13755.swr



## SENATE STANDING COMMITTEE REPORT

January 25, 2013

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 42** (third reading copy -- blue) be **concurred in**.

Signed: \_\_\_\_\_

*Terry Murphy*  
Senator Terry Murphy, Chair

To be carried by Senator Terry Murphy

- END -

**Committee Vote:**

**Yes 12, No 0**

Fiscal Note Required ☐

HB0042001SC13755.swr



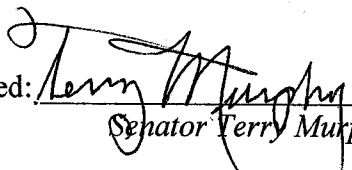
## SENATE STANDING COMMITTEE REPORT

January 25, 2013

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 132** (third reading copy -- blue) **be concurred in.**

Signed:   
Senator Terry Murphy, Chair

To be carried by Senator Robyn Driscoll

- END -

**Committee Vote:**

**Yes 12, No 0**

Fiscal Note Required ☐

HB0132001SC12924.swr



## SENATE STANDING COMMITTEE REPORT

January 25, 2013

Page 1 of 4

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 113** (first reading copy -- white) do pass as amended.

Signed: \_\_\_\_\_

*Terry Murphy*  
Senator Terry Murphy, Chair

**And, that such amendments read:**

1. Title, page 1, line 5.

**Strike:** "SEXUAL ASSAULT OR"

2. Page 1, line 10

**Strike:** everything after the enacting clause

**Insert:**    "NEW SECTION.    **Section 1. Admissibility of evidence of similar crimes in child molestation cases.** (1) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense of child molestation in any state may be admissible, notwithstanding Rule 404 of the Montana Rules of Evidence, except as otherwise provided by the United States constitution, the Montana constitution, statute, the Montana Rules of Evidence, or other rules applicable in the courts of Montana.

(2) The court may admit evidence of the other offense under this section only if it first finds each of the following:

(a) The evidence is sufficient to permit the trier of fact to find that the defendant committed the other offense.

(b) The commission of the other offense provides a reasonable basis to infer that the defendant had a character trait giving rise to an aberrant sexual propensity to commit the offense charged.

(c) The evidentiary value of proof of the other offense is not substantially outweighed by danger of unfair prejudice, confusion of issues, misleading the jury, considerations of undue

**Committee Vote:**

**Yes 12, No 0**

Fiscal Note Required ☐

delay, waste of time, or needless presentation of cumulative evidence as provided in Rule 403 of the Montana Rules of Evidence. In making that determination under Rule 403, the court shall also take into consideration the following factors, among others:

- (i) the closeness in time of the other offense to the offense charged;
- (ii) the similarity or dissimilarity of the other offense to the offense charged;
- (iii) the strength of the evidence that the defendant committed the other offense;
- (iv) the frequency of other offenses;
- (v) the presence or lack of intervening circumstances;
- (vi) the necessity of the evidence of the other offense beyond the testimony already offered at trial;
- (vii) whether the other offense resulted in a criminal conviction; and
- (viii) other facts and circumstances.

(d) The court shall make specific findings with respect to subsections (2)(a), (2)(b), and (2)(c).

(3) If the prosecution intends to offer evidence pursuant to this section, the prosecution shall disclose the evidence to the defendant. If the prosecution intends to offer a statement of a witness, the prosecution shall disclose that statement or a summary of the substance of any statement that is expected to be offered at the time of the omnibus hearing held pursuant to 46-13-110 or at a later time that the court may for good cause allow.

(4) This section does not prohibit or limit the admission or consideration of evidence under any other statute or rule.

(5) As used in this section, the following definitions apply:

(a) "Child" means a victim of an offense who is under 14 years of age if the offender was, at the time of the offense, 18 years of age or older.

(b) "Offense of child molestation" means an offense that was committed in relation to a child that may be prosecuted pursuant to 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-625, or 45-5-627 or any similar law of any other state.

(c) "State" means this state, any other state, a territory or possession of the United States, an Indian reservation, the District of Columbia, or any other area under the jurisdiction of the United States.

**Insert:    "NEW SECTION.   Section 2.   Admissibility of similar acts in civil cases involving child molestation.** (1) In a civil action in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting the offense of child molestation as defined in [section 1], evidence of that party's commission of another offense of child molestation in any state may be admissible,

notwithstanding Rule 404 of the Montana Rules of Evidence, except as otherwise provided by the United States constitution, the Montana constitution, statute, the Montana Rules of Evidence, or other rules applicable in the courts of Montana.

(2) The court may admit evidence of another offense under this section only if it first finds each of the following:

(a) The evidence is sufficient to permit the trier of fact to find that the party committed the other offense.

(b) The commission of the other offense provides a reasonable basis to infer that the party had a character trait giving rise to an aberrant sexual propensity to commit the crime charged.

(c) The evidentiary value of proof of the other offense is not substantially outweighed by danger of unfair prejudice, confusion of issues, misleading the jury, considerations of undue delay, waste of time, or needless presentation of cumulative evidence as provided in Rule 403 of the Montana Rules of Evidence. In making that determination under Rule 403, the court shall also take into consideration the following factors, among others:

(i) the closeness in time of the other offense to the offense charged;

(ii) the similarity or dissimilarity of the other offense to the offense charged;

(iii) the strength of the evidence that the defendant committed the other offense;

(iv) the frequency of the other offenses;

(v) the presence or lack of intervening circumstances;

(vi) the necessity of the evidence of the other offense beyond the testimony already offered at trial;

(vii) whether the other offense was a criminal conviction; and

(viii) other facts and circumstances.

(d) the court shall make specific findings with respect to subsections (2)(a), (2)(b), and (2)(c).

(3) A party intending to offer evidence pursuant to this section shall disclose the evidence to the opposing party. If a party intends to offer a statement of a witness, the party intending to offer the statement shall disclose the statement or a summary of the substance of the statement that is expected to be offered at least 15 days before the scheduled date of trial or at a later time that the court may for good cause allow.

(4) This section does not prohibit or limit the admission or consideration of evidence under any other statute or rule.

(5) As used in this section, "state" means this state, any other state, a territory or possession of the United States, an Indian reservation, the District of Columbia, or any other area under the jurisdiction of the United States.

**Insert:**    "NEW SECTION.    **Section 3. Codification instruction.**

(1) [Section 1] is intended to be codified as an integral part of Title 46, chapter 15, part 4, and the provisions of Title 46, chapter 15, part 4, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 26, chapter 1, and the provisions of Title 26, chapter 1, apply to [section 2]."

**Insert:**    "NEW SECTION.    **Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

- END -



## SENATE STANDING COMMITTEE REPORT

January 25, 2013

Page 1 of 2

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 133** (first reading copy -- white) do pass as amended.

Signed:   
Senator Terry Murphy, Chair

**And, that such amendments read:**

1. Title, page 1, line 6.

**Strike:** "SECTION"

**Insert:** "SECTIONS"

**Following:** "45-8-317"

**Insert:** "AND 45-8-328"

2. Page 1, line 30.

**Insert:** "Section 2. Section 45-8-328, MCA, is amended to read:

**"45-8-328. Carrying concealed weapon in prohibited place -- penalty.** (1) Except for legislative security officers authorized to carry a concealed weapon in the state capitol as provided in 45-8-317(1)(k) and criminal investigators employed by the office of the state public defender as provided in 45-8-317(1)(l), a person commits the offense of carrying a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in:

(a) portions of a building used for state or local government offices and related areas in the building that have been restricted;

(b) a bank, credit union, savings and loan institution, or similar institution during the institution's normal business hours. It is not an offense under this section to carry a concealed weapon while:

(i) using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or

(ii) at or near a branch office of an institution in a mall,

**Committee Vote:**

**Yes 12, No 0**

Fiscal Note Required ☐

grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is using the institution's financial services.

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500, or both.""

- END -



## SENATE STANDING COMMITTEE REPORT

January 25, 2013

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 107** (first reading copy -- white) do pass.

Signed: \_\_\_\_\_

*Terry Murphy*  
Senator Terry Murphy, Chair

- END -

**Committee Vote:**

**Yes 7, No 5**

Fiscal Note Required ☐

SB0107001SC.swr

**MONTANA STATE SENATE**  
**ROLL CALL VOTE**  
**2013 JUDICIARY COMMITTEE**

DATE 1/25/13 BILL NO HB139 MOTION NO. 1

MOTION:

BE CONCURRED IN

<u>NAME</u>	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>—</u>		
SENATOR JOHN BRENDEN	<u>—</u>		<u>—</u>
SENATOR JENNIFER FIELDER	<u>—</u>		
SENATOR CHAS VINCENT	<u>—</u>		
SENATOR SCOTT BOULANGER	<u>—</u>		
SENATOR ART WITTICH	<u>—</u>		
SENATOR SHANNON AUGARE	<u>—</u>		
SENATOR ANDERS BLEWETT	<u>—</u>		
SENATOR ROBYN DRISCOLL	<u>—</u>		
SENATOR LARRY JENT	<u>—</u>		
SENATOR CLIFF LARSEN	<u>—</u>		
CHAIRMAN, SENATOR TERRY MURPHY	<u>—</u>		

**MONTANA STATE SENATE**  
**ROLL CALL VOTE**  
**2013 JUDICIARY COMMITTEE**

DATE 1/5/13 BILL NO HB 42 MOTION NO. 1

MOTION:

BE CONSIDERED IN

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>—</u>		
SENATOR JOHN BRENDEN	<u>—</u>		<u>—</u>
SENATOR JENNIFER FIELDER	<u>—</u>		
SENATOR CHAS VINCENT	<u>—</u>		
SENATOR SCOTT BOULANGER	<u>—</u>		
SENATOR ART WITTICH	<u>—</u>		
SENATOR SHANNON AUGARE	<u>—</u>		
SENATOR ANDERS BLEWETT	<u>—</u>		
SENATOR ROBYN DRISCOLL	<u>—</u>		
SENATOR LARRY JENT	<u>—</u>		
SENATOR CLIFF LARSEN	<u>—</u>		
CHAIRMAN, SENATOR TERRY MURPHY	<u>—</u>		

12/6

# MONTANA STATE SENATE

## ROLL CALL VOTE

### 2013 JUDICIARY COMMITTEE

DATE 1/25/13 BILL NO. B2 MOTION NO. 1

MOTION:

Concurred In

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>—</u>		
SENATOR JOHN BRENDEN	<u>—</u>		<u>—</u>
SENATOR JENNIFER FIELDER	<u>—</u>		
SENATOR CHAS VINCENT	<u>—</u>		
SENATOR SCOTT BOULANGER	<u>—</u>		
SENATOR ART WITTICH	<u>—</u>		
SENATOR SHANNON AUGARE	<u>—</u>		
SENATOR ANDERS BLEWETT	<u>—</u>		
SENATOR ROBYN DRISCOLL	<u>—</u>		
SENATOR LARRY JENT	<u>—</u>		
SENATOR CLIFF LARSEN	<u>—</u>		
CHAIRMAN, SENATOR TERRY MURPHY	<u>—</u>		

12/0

**MONTANA STATE SENATE**  
**ROLL CALL VOTE**  
**2013 JUDICIARY COMMITTEE**

DATE 1/25/13 BILL NO SB113 MOTION NO. 4

MOTION:

amendment

11304.gjb

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>—</u>		
SENATOR JOHN BRENDEN	<u>—</u>		<u>—</u>
SENATOR JENNIFER FIELDER	<u>—</u>		
SENATOR CHAS VINCENT	<u>—</u>		
SENATOR SCOTT BOULANGER	<u>—</u>		
SENATOR ART WITTICH	<u>—</u>		
SENATOR SHANNON AUGARE	<u>—</u>		
SENATOR ANDERS BLEWETT	<u>—</u>		
SENATOR ROBYN DRISCOLL	<u>—</u>		
SENATOR LARRY JENT	<u>—</u>		
SENATOR CLIFF LARSEN	<u>—</u>		
CHAIRMAN, SENATOR TERRY MURPHY	<u>—</u>		

1210

# MONTANA STATE SENATE

## ROLL CALL VOTE

### 2013 JUDICIARY COMMITTEE

DATE 1/25/13 BILL NO SB113 MOTION NO. 5

MOTION:

Do Pass ~~Amended~~

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>—</u>		
SENATOR JOHN BRENDEN	<u>—</u>		<u>—</u>
SENATOR JENNIFER FIELDER	<u>—</u>		
SENATOR CHAS VINCENT	<u>—</u>		
SENATOR SCOTT BOULANGER	<u>—</u>		
SENATOR ART WITTICH	<u>—</u>		
SENATOR SHANNON AUGARE	<u>—</u>		
SENATOR ANDERS BLEWETT	<u>—</u>		
SENATOR ROBYN DRISCOLL	<u>—</u>		
SENATOR LARRY JENT	<u>—</u>		
SENATOR CLIFF LARSEN	<u>—</u>		
CHAIRMAN, SENATOR TERRY MURPHY	<u>—</u>		

12/0

**MONTANA STATE SENATE**  
**ROLL CALL VOTE**  
**2013 JUDICIARY COMMITTEE**

DATE 1/25/13 BILL NO. SB133 MOTION NO. 2

MOTION:

amended

13301.gjb

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>—</u>		
SENATOR JOHN BRENDEN	<u>—</u>		<u>—</u>
SENATOR JENNIFER FIELDER	<u>—</u>		
SENATOR CHAS VINCENT	<u>—</u>		
SENATOR SCOTT BOULANGER	<u>—</u>		
SENATOR ART WITTICH	<u>—</u>		
SENATOR SHANNON AUGARE	<u>—</u>		
SENATOR ANDERS BLEWETT	<u>—</u>		
SENATOR ROBYN DRISCOLL	<u>—</u>		
SENATOR LARRY JENT	<u>—</u>		
SENATOR CLIFF LARSEN	<u>—</u>		
CHAIRMAN, SENATOR TERRY MURPHY	<u>—</u>		

12/0

# MONTANA STATE SENATE

## ROLL CALL VOTE

### 2013 JUDICIARY COMMITTEE

DATE 1/25/13 BILL NO SB133 MOTION NO. 3

MOTION:

Do Pass As Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>—</u>		
SENATOR JOHN BRENDEN	<u>—</u>		<u>—</u>
SENATOR JENNIFER FIELDER	<u>—</u>		
SENATOR CHAS VINCENT	<u>—</u>		
SENATOR SCOTT BOULANGER	<u>—</u>		
SENATOR ART WITTICH	<u>—</u>		
SENATOR SHANNON AUGARE	<u>—</u>		
SENATOR ANDERS BLEWETT	<u>—</u>		
SENATOR ROBYN DRISCOLL	<u>—</u>		
SENATOR LARRY JENT	<u>—</u>		
SENATOR CLIFF LARSEN	<u>—</u>		
CHAIRMAN, SENATOR TERRY MURPHY	<u>—</u>		

12/0

# MONTANA STATE SENATE

## ROLL CALL VOTE

### 2013 JUDICIARY COMMITTEE

DATE 1/28/13 BILL NO SB107 MOTION NO. 1

MOTION: Do Pass


NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES		<u>      </u>	
SENATOR JOHN BRENDEN		<u>      </u>	
SENATOR JENNIFER FIELDER		<u>      </u>	
SENATOR CHAS VINCENT	<u>      </u>		
SENATOR SCOTT BOULANGER		<u>      </u>	<u>      </u>
SENATOR ART WITTICH		<u>      </u>	
SENATOR SHANNON AUGARE	<u>      </u>		
SENATOR ANDERS BLEWETT	<u>      </u>		
SENATOR ROBYN DRISCOLL	<u>      </u>		
SENATOR LARRY JENT	<u>      </u>		
SENATOR CLIFF LARSEN	<u>      </u>		
CHAIRMAN, SENATOR TERRY MURPHY	<u>      </u>		

7/5

# SENATE PROXY

I, Senator BRENDEM, hereby authorize Senator  
SALES to vote my proxy before the  
Senate JUDICIARY meeting held on  
                    , 2013.

\_\_\_\_\_, 2013.



\_\_\_\_\_  
Senator Signature (Sen. John Brenden)

1/25/13


Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

# SENATE PROXY

I, Senator Boulanger, hereby authorize Senator  
SALES to vote my proxy before the  
Senate JUDICIARY meeting held on  
                    , 2013.

  
 \_\_\_\_\_  
 Senator Signature (Sen. Scott Boulanger)

1/25/13 Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

**MONTANA STATE SENATE**  
**Visitors Register**  
**SENATE JUDICIARY COMMITTEE**

**Friday, January 25, 2013**

## HB 42 - Revise laws related to destruction of property by minors

**Sponsor: Representative Keith Regier**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**MONTANA STATE SENATE**  
**Visitors Register**  
**SENATE JUDICIARY COMMITTEE**

**Friday, January 25, 2013**

## HB 132 - Revise Montana highway patrol use of uniform, title

**Sponsor: Representative Steve Lavin**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**MONTANA STATE SENATE  
Visitors Register  
SENATE JUDICIARY COMMITTEE**

**Friday, January 25, 2013**

## HB 139 - Update laws governing law enforcement communications system

**Sponsor: Representative Steve Lavin**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**